REMARKS

Amendments to the Claims

Claims 1-29 and 48-53 were pending in this application, and are subject to a Restriction Requirement. Claims 17-19 are canceled herein, without prejudice to renewal. Claim 22 is amended herein to correct dependency. Applicants expressly reserve the right to pursue protection of any or all of the deleted subject matter in a divisional or continuation application. After entry of this response, **Claims 1-16, 20-29, and 48-53 are pending in the application**. Substantive examination of all of the pending claims is respectfully requested.

Restriction Requirement

In response to the restriction requirement, Applicants provisionally elect, with traverse, the claims of Group I, directed to a method of diagnosing an increase or decrease of vascular function or risk by assaying a number of endothelial cells (claims 1-16 and 48-50). Applicants submit that the claims of Group I share the same technical feature with the claims of Group III.

The Office action alleges that the pending claims describe three different inventions or groups of inventions (I through III) which do not share a special technical feature in view of Kalka et al., Cir. Res. 86:1198-1202, 2000. Applicants respectfully disagree.

The special technical feature of the claims of Group I is the measurement of the number of endothelial progenitor cells (EPCs) to detect decreased vascular function, wherein a decrease in the number of EPCs as compared to a control indicates that the subject has altered vascular function. The special technical feature of the claims of Group III is also the measurement of the number of EPCs, wherein an increase in the number of EPCs indicates that the agent is of use in increasing vascular function. Thus, the claims of Groups I and III share the same special technical feature: detecting alterations in EPCs to detect alterations in vascular function.

Kalka et al. discloses that EPCs home to sites of neovasularization and differentiate into endothelial cells in situ (see page 1198). Kalka et al. describe that vascular endothelial cell growth factor (VEGF) gene transfer into the muscle in an ischemic limb in human patients increased the number of circulating endothelial progenitor cells (see page 1199). Kalka et al. hypothesize that the increase in VEGF expression may promote neovascularization of ischemic limbs (angiogenesis) (see page 1201). However, Kalka et al. does not use the number of EPCs in

a disease state to diagnose a disease, let alone to assess vascular function, nor does Kalka et al. suggest that the number of EPCs are of use in screening for agents of interest. Thus, Kalka et al. does not negate the special technical feature of Groups I and Group III. Reconsideration and rejoinder of Groups I and III is respectfully requested.

Conclusion

It is respectfully submitted that the pending claims should all be recombined and considered in the current case, and as such they are in a condition for substantive examination. In the unlikely event that any additional restriction requirement is asserted, the Examiner is formally requested to contact the undersigned prior to issuance of the next Office action, in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. This request is being submitted under MPEP §713.01, which indicates that an interview may be arranged in advance by a written request.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

By /Susan Alpert Siegel/
Susan Alpert Siegel, Ph.D.
Registration No. 43,121